

**AMENDED AND RESTATED  
AGREEMENT FOR SERVICES  
IN LIEU OF ANNEXATION**

**AMONG**

**CITY OF SAN ANTONIO, TEXAS**

**AND**

**JOHN PIERRET, CRAIG KNIGHT, CHUCK HUDSON,  
GARY McATEE, and BOBBY MANN , AS REPRESENTATIVES  
APPOINTED BY THE BEXAR COUNTY  
COMMISSIONERS COURT**

**AND**

**LUMBERMEN'S INVESTMENT CORPORATION**

**(AND AGREED TO AND ACKNOWLEDGED BY  
CCRHD LIMITED PARTNERSHIP)**

**DATE: JANUARY 28, 2005**

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**EXHIBITS:**

A	Declaration of Restrictive Covenants
A-1	Form of First Amendment to the Declaration of Restrictive Covenants
B	Form of Firefighting Services Agreement
C	Description of the Land
D	Form of Landowner's Consent to Annexation
D-1	Form of First Amendment to the Landowner's Consent to Annexation
E	Wage Standards Agreement
E-1	Form of First Amendment to the Wage Standards Agreement

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**AMENDED AND RESTATED**

**AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION**

This **AMENDED AND RESTATED AGREEMENT FOR SERVICES IN LIEU OF ANNEXATION** is made and entered into, as of the Effective Date (herein defined), by and between:

**CITY:** CITY OF SAN ANTONIO, TEXAS, a municipal corporation;

**REPRESENTATIVES:** JOHN PIERRET, CRAIG KNIGHT, CHUCK HUDSON, GARY McATEE, and BOBBY MANN (collectively in their capacity as appointed representatives pursuant to *Section 43.0562(b), Texas Local Government Code*); and

**DEVELOPER:** LUMBERMEN'S INVESTMENT CORPORATION, a Delaware corporation; and

agreed to and acknowledged by:

**DEVELOPER PARTNERSHIP:** CCRHD LIMITED PARTNERSHIP, a Delaware partnership.

**RECITALS**

A. Developer owns the Land (herein defined) or controls ownership of the Land through the Developer Partnership, which is located within the City's ETJ. The Land consists of six tracts and there is one residential dwelling on Tract One (as described in **Exhibit "C"**) and no residential dwelling on any of the other five tracts.

B. By Ordinance 96603, dated October 24, 2002, the City Council adopted a municipal annexation plan (the "**Annexation Plan**") in accordance with *Section 43.052, et. seq., Texas Local Government Code*, which covers the Land. Pursuant to such Annexation Plan, City issued written notice to each property owner of the Land as shown on the Bexar Appraisal District records, and to all public entities and private entities providing services to the Land.

C. Based in part upon the responses to the written notices provided to the public and private entities providing services to the Land, City prepared an inventory of services and facilities which the City would be required to provide following annexation of the Land by City. Consistent with the inventory, City has prepared and made available to the public the Service Plan (as defined in the Landowners Consent to Annexation) for the provision of full municipal services to the Land, in accordance with *Section 43.056, Texas Local Government Code*. Further, in accordance with *Section 43.0561, Texas Local Government Code*, City has conducted two public hearings concerning the Service Plan at which persons interested in the Annexation Plan and Service Plan were given an opportunity to be heard.

D. Pursuant to *Section 43.0562(b), Texas Local Government Code*, the Commissioners Court of Bexar County has appointed the Representatives for the purposes of negotiating for the provision of services to the Land upon annexation or for the provision of services to the Land in lieu of annexation, in accordance with *Section 43.0563, Texas Local Government Code*.

E. City, Developer and Representatives entered into that certain Agreement for Services in Lieu of Annexation on December 9, 2002 (the "**Original Agreement**") to evidence their agreement concerning the provision of services to the Land and the funding of services to the Land in lieu of annexation, to establish permissible land uses, to require compliance with certain municipal ordinances in lieu of annexation, and to consent to annexation of the Land upon the termination of the Original Agreement, as provided therein and as may be amended herein.

F. The Land is located within the Edwards Aquifer Recharge Zone and/or the Edwards Aquifer Contributing Zone in northeastern Bexar County, Texas, and does or may have land forms which permit recharge to underground aquifers, including (without limitation) caves, sinkholes, solution cavities, faults and similar formations, and subject to the terms of this Agreement, Developer has agreed to land use restrictions, environmental management obligations and the application of certain municipal ordinances to the Land, as more fully set forth in the Declaration, and any amendment thereto (herein defined).

G. In addition to the specific authority given to City to enter into the Original Agreement by *Chapter 43, Texas Local Government Code*, City entered into the Original Agreement pursuant to the authority given to City by *Section 380.001, Texas Local Government Code*, in order to promote economic development and stimulate business and commercial activity, and pursuant to the inherent authority of home rule municipalities to enter into agreements to defer annexation of land in consideration of benefits to be received by the municipality.

H. The present and future benefits to be received by City by entering into the Original Agreement and deferring the annexation of the Land include (i) Developer's voluntary compliance with various City ordinances and regulations that would otherwise not be applicable to the Development; (ii) the development of the Land with less density and less impervious cover, and with more open space than legally required; (iii) the business and commercial activity and other economic development opportunities resulting from the Development; (iv) the development of the Land in an orderly manner to facilitate its future annexation in an appropriate and economical manner; (v) the expected increased future tax base when the Land is annexed; and (vi) Developer's consent to annexation by City upon termination of this Agreement pursuant to the Landowner's Consent to Annexation.

I. In reliance on City's agreement not to annex the Land for the Term, pursuant to the terms of this Agreement, Developer has (i) agreed to substantially alter the manner in which it would otherwise develop the Land; (ii) agreed to voluntarily comply with various City ordinances and regulations and restrictive covenants that limit and restrict the manner in which the Land will be developed; (iii) agreed to reduce the density and impervious cover on the Land and provide a substantial amount of open space; (iv) agreed not to seek creation of a separate political subdivision for the Land except as otherwise provided herein; (v) agreed not to petition the formation of a public improvement district by City; (vi) agreed not to seek to use any portion of the Land for purposes authorized under the *Tax Increment Financing Act, Chapter 311, Texas Tax Code*; and (vii) consented to voluntary annexation of the Land upon any termination of this Agreement unless such termination results from a default hereunder by City.

J. In consideration of the agreements under the Original Agreement by Representatives and Developer and subject to the terms and conditions of the Original Agreement, City agreed to continue the extraterritorial status of the Land and defer future annexation of the Land until the end of the Term (as defined therein).

K. City, Representatives and Developer entered into the Original Agreement on December 9, 2002 and now desire to amend and restate the Original Agreement as provided for herein.

**NOW, THEREFORE**, for and in consideration of the mutual agreements, covenants and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows, which agreement shall constitute an amendment to, and restatement of, the Original Agreement:

#### DEFINITIONS AND INTERPRETATIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Agreement has the meaning set forth below, unless the context in which such term or phrase is used clearly indicates otherwise:

**"Agreement"** means this Amended and Restated Agreement for Services in Lieu of Annexation Agreement.

**"Annexation Plan"** means as defined in the Recitals.

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**"City"** means City of San Antonio, Texas, a home rule city under Article 11, Section 5, of the Texas Constitution and municipal corporation primarily situated in Bexar County, Texas.

**"City Code"** means the City Code of San Antonio, Texas, enacted by the City Council, which constitutes the code of civil and criminal ordinances of City.

**"City Council"** means the City Council of City of San Antonio, Texas, or any successor governing body.

**"City Representative"** means the City Manager or her designated representative, with notice of such replacement given to Developer in accordance with this Agreement.

**"City's Ordinance"** means Ordinance No. 100238, authorizing this Agreement, adopted January 6, 2005.

**"Commencement of Hotel Construction"** means site grading on the site of the Hotel shall have continued for not less than thirty (30) days following the date on which the filing of a complete "Application for Building/System(s)/Access Permit" or its successor form, has been made with the Bexar County Fire Marshal's Office.

**"Commencement of Golf Course Construction"** means the later to occur of (i) the date on which the key points and centerlines of each golf hole for the first golf course to be constructed pursuant to this Agreement have been staked on the ground and (ii) the removal of trees and natural vegetation from that Golf Course Tract has commenced, subject to satisfaction of the conditions precedent to construction as set forth in the Golf Course Environmental Management Plan.

**"Completion of Construction"** means as defined in the Declaration.

**"Compliance Review Team"** means, collectively, those individuals appointed by City's Independent Auditor and approved by the City Council to review the performance of the Parties and the compliance by the Parties with the terms, conditions and requirements of this Agreement and each exhibit hereto.

**"Conservation Easement"** means a conservation easement obtained by Developer pursuant to this Agreement which complies with the requirements of **Article 6** hereof.

**"Declaration"** means that certain Declaration of Restrictive Covenants, with Developer as Declarant, filed in the Official Records on January 7, 2003, recorded in Volume 9766, Page 1682, as attached hereto as **Exhibit "A"**, and as amended by the First Amendment to the Declaration.

**"Developer"** means Lumbermen's Investment Corporation, a corporation organized under the laws of the State of Delaware.

**"Developer Representative"** means John K. Pierret or his replacement identified by Developer, with notice of such replacement given to City Representative in accordance with this Agreement.

**"Development"** means the high quality, master-planned community, with at least one full service, resort style hotel, residential housing, related commercial uses and up to two (2) or more eighteen (18) hole golf courses, which Developer has proposed for the Land.

**"ERZD"** means the Edwards Aquifer Recharge Zone.

**"Effective Date"** means the date on which all Parties have signed this Agreement.

**"ETJ"** means the extraterritorial jurisdiction of City established pursuant to *Chapter 212, Texas Local Government Code*, as amended.

**"Firefighting Services Agreement"** means the Firefighting Services Agreement between City and Developer for the provision of fire protection for real property, including the Land, or portions of the Land and inhabitants thereof, in the form attached hereto as **Exhibit "B"**.

**"First Amendment to the Declaration"** means the First Amendment to the Declaration, in the form attached hereto as **Exhibit "A-1"**.

**"First Amendment to the Landowner's Consent to Annexation"** means the First Amendment to the Landowner's Consent to Annexation, in the form attached hereto as **Exhibit "D-1"**.

**"First Amendment to the Wage Standards Agreement"** means the First Amendment to the Wage Standards Agreement, in the form attached hereto as **Exhibit "E-1"**

**"Golf Course Environmental Management Plan"** means the Cibolo Canyon Golf Course Environmental Management Plan, as amended and restated, in the form attached to the First Amendment to the Declaration as **Exhibit "A"** thereto, as may be amended or supplemented from time to time in accordance with the terms thereof, and which amends and restates the Cibolo Canyon Golf Course Environmental Management Plan filed as **Exhibit "B"** to the Declaration which was filed in the real property records of Bexar County on January 7, 2003.

**"Golf Course Facilities"** means two (2) eighteen-hole golf courses and a golf learning center.

**"Golf Course Tracts"** means as defined in the Declaration.

**"Governmental Approvals"** means any approval required by a Governmental Authority.

**"Governmental Authority"** means any applicable federal, state, county or City governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over the Land or its inhabitants.

**"Governmental Functions"** means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority.

**"Governmental Rules"** means any statute, law, treaty, rule, code, ordinance, regulation, permit, official interpretation, certificate or of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

**"Hotel"** means the first "full service, resort style" hotel with approximately eight hundred (800) guestrooms, to be built on the Land.

**"Impervious Cover"** means as defined in the Declaration.

**"Land"** means 2,597.6473 acres of land, more or less, consisting of six separate and distinct tracts, as described in **Exhibit "C"**.

**"Landowner"** means, individually and collectively, each owner of any part of or interest in the Land (including, without limitation, a leasehold interest) other than a lien or security interest.

**"Landowner's Consent to Annexation"** means the Landowner's Consent to Annexation, effective as of December 31, 2002, and any amendment thereto, attached hereto as **Exhibit "D"**.

**"Major Thoroughfare Plan"** means the plan adopted by City Council September 21, 1978, as amended, which reflects proposed locations of major thoroughfares in the ETJ.



**"Marriott"** means Marriott International, Inc.

**"Marriott Controlled Entity"** means either (i) a wholly owned subsidiary of Marriott, (ii) an entity that directly or indirectly controls, is controlled by, or is under common control with Marriott, or (iii) an entity which has executed a long term management agreement for the hotel with Marriott, or their successor in interest.

**"Master Development Plan"** means a master development plan for the Land consistent with the terms of this Agreement and the Development, which shall be submitted to the City for approval in accordance with the UDC.

**"OED"** means the City's Office of Economic Development or such other functional division of City which may hereafter assume the performance of the functions of City's Office of Economic Development

**"Official Records"** means the Official Public Records of Real Property of Bexar County, Texas.

**"Party" or "Parties"** means a party or the parties to this Agreement, being City, the Representatives, and Developer.

**"PGA Tour"** means PGA Tour Golf Course Properties, Inc.

**"PGA Tour Owner Entity"** means either (i) a wholly owned subsidiary of PGA Tour or (ii) an entity that directly or indirectly controls, is controlled by, or is under common control with PGA Tour.

**"Representatives"** means the individuals named on page one of this Agreement, collectively, acting as the representatives appointed by the County's Commissioners Court.

**"Restrictions"** means the covenants and restrictions described in the Declaration, as may be amended from time to time.

**"SAWS"** means the San Antonio Water System, the City-owned purveyor of water and sewer services.

**"Sewer Contract"** means the "OSA Sewer Service Contract" and any amendments thereto, dated February 29, 2000, between SAWS and Developer.

**"State"** means the State of Texas.

**"Term"** means a period of time commencing upon the Effective Date and ending on the earlier to occur of (i) twenty-five (25) years from the Completion of Construction, or (ii) twenty-five (25) years from the 4<sup>th</sup> anniversary of the Effective Date.

**"Termination Event"** means those events described in **Section 8.1, Section 8.2 and Section 8.3** of this Agreement which give rise to the automatic or optional termination of this Agreement.

**"Unified Development Code" or "UDC"** means Chapter 35, San Antonio Municipal Code, entitled the "Unified Development Code," adopted by City on May 3, 2001.

**"Wage Standards Agreement"** means that certain Wage Standards Agreement, effective November 1, 2002, by and between City and Developer, and any amendments thereto, attached hereto as **Exhibit "E"**.

**"Water Provision Agreement"** means the Water Provision Agreement, and any amendments thereto, between SAWS and Developer related to the Golf Course Tracts.

**"Water Service Agreement"** means the Water Service Agreement For Lumbermen's Investment Corporation set forth in letter from SAWS to Pape-Dawson Engineers, Inc., and any amendments thereto, concerning the Development.

## **ARTICLE 1. TERM; PRELIMINARY MATTERS**

**1.1 Term.** This Agreement shall commence on the Effective Date and shall continue in effect until the earlier to occur of (i) the expiration of the Term or (ii) the termination of the Agreement pursuant to a Termination Event. In the event this Agreement does not take effect due to termination pursuant to the provisions hereof or other event, or is terminated by mutual agreement of the Parties or other event, the Parties shall each promptly execute a document confirming the termination or lack of effect, as applicable, of this Agreement.

**1.2 Preliminary Matters.** Not later than thirty (30) days following the Effective Date:

**1.2.1 Execution of Documents.** Developer and City shall execute, acknowledge and deliver to each other not less than triplicate counterpart originals of the First Amendment to the Landowner's Consent to Annexation and First Amendment to the Wage Standards Agreement, each of which may be filed in the Official Records.

**1.2.2 Filing of Declaration.** Developer shall execute, acknowledge and cause to be filed in the Official Records, at Developer's expense, the First Amendment to the Declaration.

**1.2.3 Payment of Annual Monitoring Fee.** Developer has paid SAWS the sum of \$100,000.00 as the initial annual monitoring fee pursuant to the Golf Course Environmental Management Plan.

## **ARTICLE 2. ANNEXATION**

**2.1 Deferred Annexation Period.** City, subject to the conditions set forth in this Agreement, agrees to continue the extraterritorial status of the Land and its immunity from annexation by City until this Agreement has terminated.

**2.2 Consent to Annexation.** Developer consents to the annexation of the Land by City to occur at the end of the Term or upon termination hereof pursuant to a Termination Event, as more fully set forth in the Landowner's Consent to Annexation. During the Term, City may take all necessary steps to accomplish annexation of the Land upon the termination of this Agreement. Developer, for itself and future Landowners, agrees to execute any and all documents reasonably requested by City to evidence such consent.

**2.3 Agreements to Survive.** The provisions of Section 2.2 are and shall be construed as a separate agreement by the Parties and may be enforced separately and independently of this Agreement upon termination hereof.

## **ARTICLE 3. DEVELOPMENT**

**3.1 Reservation of Rights.** The Developer shall retain such rights as described herein.

**3.1.1 Preliminary Overall Area Development Plan No. 452.** Developer has submitted the "Evans Road Tract Subdivision Preliminary Overall Area Development Plan NO. 452," which was accepted by City subject to the terms and conditions set forth in letter dated January 20, 1995, from David W. Pasley, Director of Planning, Department of Planning, City of San Antonio, to Rueben (sic) Cervantes, Pape-Dawson Engineers. Further, Developer intends to submit for City approval, a Master Development Plan. Upon acceptance by City, Developer may thereafter withdraw such Master Development Plan and submit for City's approval, a successor master development plan which reflects the land uses substantially similar to those shown on the Master Development Plan. If this Agreement is terminated prior to the Completion of Construction of the Hotel, Developer may withdraw its filing of the Master Development Plan or any successor master development plan(s) and thereafter the Evans Road Tract Subdivision Preliminary Overall Area Development Plan NO. 452 will be deemed to be

effective as if the Master Development Plan and any successor master development plan(s) had not been submitted for approval. City agrees that submission of the Master Development Plan or any successor master development plan submittals shall not constitute a project alteration and, as such, any such submittals shall not affect the vested rights, if any, attributable to the Land, except as provided in **Subsection 3.1.2**. Evans Road Tract Subdivision Preliminary Overall Area Development Plan NO. 452, the Master Development Plan and any successor master development plans shall be considered an on-going "project" as contemplated by *Chapter 245, Texas Local Government Code* and Article VII of the UDC and the term of such project shall not terminate for any reason prior to the expiration of the Term of this Agreement.

**3.1.2 Vested Rights.** Developer has agreed to abide by, comply with, observe and be governed by certain City ordinances and certain amendments to those ordinances as described in the Declaration. Developer does not waive, relinquish or release any existing permits or approvals it may have with respect to the Land, including, but not limited to, the rights evidenced by Vested Right Permit No. VRP-01-11-038 approved by City on December 7, 2001 (relating to the "Evans Road Tract Subdivision Preliminary Overall Area Development Plan No. 452, as referenced in **Subsection 3.1.1**), until Completion of Construction. Upon any termination of this Agreement prior to the Completion of Construction, Developer shall continue to have the benefit of any remaining unexpired permits and approvals that may still be applicable to the Land. Upon Completion of Construction, Developer does waive and release such rights to the extent such rights are inconsistent with the terms of this Agreement, including any exhibits to this Agreement, such waiver to survive any termination of this Agreement.

**3.1.3 Amendments.** By entering into this Agreement and agreeing to abide by, comply with, observe and be governed by certain City ordinances and the future amendments to those ordinances as described in the Declaration, Developer does not waive, relinquish or release the rights of Developer under *Chapter 245, Texas Local Government Code*, including the rights in *Section 245.002* thereof relating to the uniformity of requirements, except to the limited extent expressly set forth in **Article 1** of the Declaration and in Section 35-712 of the UDC.

**3.2 Fire Protection Services by City .** As authorized by *Section 43.0563(c), Texas Local Government Code*, City has agreed to provide fire protection services to the Land and its inhabitants in accordance with the Firefighting Services Agreement. Subject to execution thereof by Developer, and upon Developer's request, City shall execute and deliver to Developer the Firefighting Services Agreement.

**3.3 Financing Agreements .** So long as City complies with its agreement not to annex the Land, Developer agrees that it will not, without the prior written approval of City Council;

(i) seek the creation of any political subdivisions on any part of the Land with the power to tax or issue debt; except that Developer may petition a Governmental Authority other than City for the creation of a municipal public improvement district pursuant to *Chapter 372, Texas Local Government Code*, provided that, (a) Developer notifies City no less than sixty (60) days prior to submitting any petition to a Governmental Authority for the creation of the public improvement district (or consenting to a petition initiated by a Governmental Authority), (b) Developer agrees to disclose and discuss all terms of the public improvement district petition with City prior to submitting a petition (or consenting to a petition), and (c) Developer guarantees to City that City will not be liable for any debt that may exist in the public improvement district at the time of annexation of the Land by City; or

(ii) enter into any an agreement to induce creation of a tax increment financing zone pursuant to the "*Tax Increment Financing Act*," *Chapter 311, Texas Tax Code*.

City does not hereby consent to the creation of any political subdivisions of the Land or any part thereof.

**3.4 Good Faith Effort Plan .** Pertaining to Developer's activities relating to the Development, Developer shall in good faith comply with the following:

**3.4.1 Non-Discrimination .** Developer shall not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability.

**3.4.2 Adherence to Advocacy Policy .** Developer shall make a good faith effort to comply with the contracting goals for small, minority or woman-owned businesses, as set forth in the City's SBEDA program, in effect as of the Effective Date. A copy of such policy is available in the City Clerk's Office and in OED, in City's Office of Internal Review and in the Department of Human Resources.

**3.4.3 Good Faith Effort Plan .** Prior to Commencement of Hotel Construction, Developer shall submit a "Good Faith Effort Plan" to City's Director of OED to describe Developer's compliance with **Subsection 3.4.2** above. If the Director of OED determines that Developer's Good Faith Effort Plan does not comply with such **Subsection 3.4.2**, Developer will be required to submit a supplemental Good Faith Effort Plan to the Director of OED indicating Developer's efforts to resolve any identified deficiencies in the plan originally submitted by Developer.

#### **ARTICLE 4. DEVELOPMENT OBLIGATIONS AND LIMITATIONS**

**4.1 Development Fees.** Developer shall pay City all application, plan review, plat review, and filing fees applicable to the approval of subdivision plats in the ETJ and all fees (including, without limitation, impact fees, traffic impact analysis fees, water/wastewater impact fees, water supply fees, general benefit fees and stormwater management fees) assessed with respect to the Development at the times and in the amounts set forth in the UDC, this Agreement or under other agreements between Developer and City and/or SAWS related to the Development.

**4.2 Amendment of Major Thoroughfare Plan.** City agrees to support an amendment of the Major Thoroughfare Plan which (i) deletes all roadways located on the Land which are reflected on the Major Thoroughfare Plan as being located north of the east-west arterial ("Cibolo Canyon Boulevard") and (ii) changes the alignment of Cibolo Canyon Blvd. to connect to Evans Rd. along its frontage with the Land and to eliminate the extension of Cibolo Canyon Blvd. to the east property line of the Land.

**4.3 Moratoria on Building.** City agrees that it will not impose or attempt to impose any moratoria on development or construction upon the Land or with respect to the Development, so long as such development or construction complies with this Agreement and the approved Development Plan and Developer is not in default hereunder or under the terms of the Declaration.

**4.4 Quarterly Reports.** Until Completion of Construction, Developer shall provide written reports to City Representative regarding the progress of the development of the Hotel and the golf courses, but in no case shall such reports be required to be submitted more frequently than every ninety (90) days.

**4.5 Term Sheet.** Not later than thirty (30) days following the Execution Date, at the offices of Developer's counsel, City's agent shall review the Term Sheet executed by Developer, Marriott, PGA Tour and PGA Tour, Inc. that describes in general the obligations that the parties thereto will be undertaking in connection with the Hotel and the Golf Course Facilities.

**4.6 Hotel Agreement.** Not later than March 1, 2006, at the offices of Developer's counsel, City's agent shall review a complete copy of the executed purchase agreement between Developer and Marriott with regard to the acquisition of the Hotel site, to confirm to City that the purchase agreement between Developer and Marriott (i) evidences a legally binding obligation on the part of Marriott to acquire the Hotel site and have the Hotel built (as well as the Golf Course Facilities if such Golf Course Facilities are not to be constructed pursuant to the agreement described in **Section 4.7** below) and (ii) requires that City shall be given written notice of any (a) uncured or incurable material default which has not been waived and which could cause termination of the agreement, (b) any material amendment and (c) termination of such purchase agreement by Developer or Marriott. Not later than March 1, 2006, City shall be provided with a certificate signed by Developer and by Marriott that:

**4.6.1** attaches thereto a true and correct copy of the general provisions of such agreement between Developer and Marriott with regard to the Hotel that confirms the obligations on the part of Marriott and notice requirements described in 4.6 above; and

**4.6.2** states that all contingencies to Marriott's obligations under such agreement (other than any financing contingency, obligation to obtain required Governmental Approvals and permits, engineering approval of soil conditions on the Hotel site, satisfactory environmental audits, assignment contingencies and performance thereunder by the other party thereto) have been waived or satisfied.

**4.7 Golf Course Operating Agreement.** Not later than March 1, 2006, at the offices of Developer's counsel, City's agent shall review a complete copy of the executed management agreement pursuant to which PGA Tour will operate and manage the Golf Course Facilities, to confirm to City that the agreement (i) evidences a legally binding obligation of PGA Tour to construct (if such Golf Course Facilities are not to be constructed pursuant to the agreement described in **Section 4.6** above), operate and manage the Golf Course Facilities and (ii) requires that City shall be given written notice of any material default, any amendment or the termination of such agreement by each party thereto. Not later than March 1, 2006, City shall be provided with a certificate signed by PGA Tour confirming that such management agreement is in full force and effect. Attached to such certificate shall be a true and correct copy of the general provisions of the executed management agreement that confirms PGA Tour's legally binding obligation to construct (if such Golf Course Facilities are not to be constructed pursuant to the agreement described in **Section 4.6** above), operate and manage the Golf Course Facilities and requires notices from any party to such agreement to City of any (a) uncured or incurable material default which has not been waived and which could cause termination of the agreement, (b) any material amendment and (c) termination thereof.

**4.8 Golf Course License Agreement.** Not later than March 1, 2006, at the offices of Developer's counsel, City's agent shall review a complete copy of the executed golf course license agreement with PGA Tour, Inc. with regard to the development, operation, promotion and marketing of the Golf Course Facilities utilizing certain tradenames, trademarks, service marks and other intellectual property rights of PGA Tours, Inc., including without limitation, the "Tournament Players Club" marks, to confirm to City that the licensing agreement obligates PGA Tour, Inc. to permit the use of such intellectual property rights in the operation of the Golf Course Facilities and requires that City shall be given written notice by any party to such licensing agreement of any (a) uncured or incurable material default which has not been waived and which could cause termination of the agreement, (b) any material amendment and (c) termination thereof. Not later than March 1, 2006, City shall be provided with a certificate signed by PGA Tour, Inc. that such licensing agreement is in full force and effect and shall attach to such certificate a true and correct copy of the general provisions of the executed license agreement that confirms the grant of the license rights described herein and requires notice to City from each party to such license agreement to City of any material default, any amendment and the termination thereof.

**4.9 Commencement of Construction.** Developer shall provide written notice to City Representative of the dates that Commencement of Hotel Construction and Commencement of Golf Course Construction, not later than thirty (30) days following each such date.

## **ARTICLE 5. WATER AND WASTEWATER**

**5.1 Water Services.** The Land is in SAWS's certified water service area. SAWS is the exclusive purveyor of potable water services to the Land, pursuant to the SAWS Certificate of Convenience and Necessity No. 10640. In addition, SAWS shall be the exclusive purveyor of all other water services to the Land except to the extent that SAWS (i) may have insufficient water resources to comply with the Water Provision Agreement, or (ii) fails to provide water services in breach of the Water Provision Agreement. Developer and SAWS have entered into the Water Service Agreement and Water Provision Agreement, pursuant to which SAWS will provide water service to the Land.

**5.2 Sewer Contract.** Public wastewater collection services shall be furnished by SAWS to the inhabitants of the Land in accordance with the Sewer Contract. SAWS is the exclusive purveyor of wastewater service to the Land pursuant to the SAWS Certificate of Convenience and Necessity No. 20285.

**5.3 Water Conservation Measures.** The Land shall be subject to the requirements imposed by the "Aquifer Management Plan Ordinance No. 80574," as set forth in the City Code, Chapter 34, Article IV, Divisions

1-4, Sections 287-350, inclusive, and known as the "Critical Period Management Rules," provided that, to the extent that the terms and conditions of the Water Provision Agreement may vary the Critical Period Management Rules or the application thereof with respect to the irrigation of the Golf Course Tracts and Golf Course Related Improvements (as defined in the Declaration), City approves such terms so long as Developer shall fully satisfy and perform the conditions set forth in the Water Provision Agreement. City also approves the rates, fees and charges imposed by SAWS under the terms of the Water Provision Agreement. This **Section 5.3** will survive termination of this Agreement.

## **ARTICLE 6. CONSERVATION EASEMENTS**

**6.1 Developer's Obligation to Acquire Conservation Easements.** Developer covenants and agrees to obtain Conservation Easements on not less than seven hundred (700) acres located in the ERZD or the Edwards Aquifer Recharge Contributing Zone, no later than either, (i) the fourth (4<sup>th</sup>) anniversary of the Effective Date, or (ii) the date of Completion of Construction, whichever is first to occur. The Conservation Easements shall be granted either to City, or to a non-profit, tax-exempt entity approved by City, at the sole option of City and shall comply with the following requirements and limitations:

**6.1.1** No part of the Golf Course Tracts or Open Space Area (as defined in the Declaration) may be used to satisfy the acreage requirement under this **Section 6.1**.

**6.1.2** Each tract of land covered by a Conservation Easement shall comprise at least sixty-five (65) acres unless such tract is contiguous to a Golf Course Tract, unless otherwise approved by City.

**6.2 Permitted Uses for Lands Subject to Conservation Easements .** The grantor and grantee of each Conservation Easement may utilize the land encumbered thereby for the following activities and uses:

**6.2.1** Natural habitat parks with indigenous wildlife, plants and ecosystems;

**6.2.2** Passive recreational uses, including nature trails;

**6.2.3** Drainage control facilities;

**6.2.4** Measures to control invasive species of plant and animal life detrimental to the conservation values of the land subject to the Conservation Easement;

**6.2.5** Construction of firebreaks and minimal roadways for ingress and egress for fire, emergency medical and police services;

**6.2.6** Removal of dead, diseased or non-native trees, shrubs or plants;

**6.2.7** Measures to monitor plant and wildlife populations, plant communities and natural habitats;

**6.2.8** Construction of perimeter fences and cross-fences as necessary to protect the land;

**6.2.9** Use, maintenance or improvement of any existing unpaved, internal ranch roads;

**6.2.10** Use, repair, replacement and maintenance of water wells and transmission lines and related construction for use of water wells conveyed to SAWS under the Water Provision Agreement;

**6.2.11** Construction and maintenance of electric power lines and any related substation(s) of City Public Service Board of San Antonio, the City-owned provider of electric and gas services (or its successors and assigns), including rights of ingress and egress related to such construction and maintenance; and

**6.2.12** Uses reasonably necessary to comply with a permit issued by Texas Department of Parks and Wildlife; U.S. Fish and Wildlife Service; Texas Commission on Environmental Quality; U.S. Environmental Protection Agency; or their successors.

**6.3 Prohibited Uses for Lands Subject to Conservation Easements.** Each Conservation Easement will prohibit the following activities and uses of the land encumbered thereby, except to the extent undertaken in furtherance of a use permitted in **Section 6.2** above:

- 6.3.1** Placement or construction of Impervious Cover;
- 6.3.2** Drilling, surface mining or other extraction of minerals by surface or subsurface methods;
- 6.3.3** Commercial agricultural purposes of any kind;
- 6.3.4** Excavating, removal of topsoil, sand, gravel, rock, or other materials or changes in the topography;
- 6.3.5** Removal, harvesting, destruction or cutting of living native trees, plants or shrubs, planting of non-native trees, plants or shrubs, dumping or storage of any waste or other substances, including any deposits caused by erosion or siltation from adjacent property, or activities which are detrimental to wildlife habitat;
- 6.3.6** Use of insecticides, fungicides, rodenticides, herbicides or other biocides or pesticides, unless required for the protection of human health and safety; and
- 6.3.7** Activities that are detrimental to drainage, flood control or soil conservation.

If any of the uses prohibited under the terms of a Conservation Easement later are deemed desirable by the mutual agreement of the grantor and grantee of such Conservation Easement, such uses and activities will be permitted to the extent authorized in writing by such parties, subject to **Section 6.6** below.

**6.4 Title to Property Subject to Conservation Easements.** To be suitable land upon which a Conservation Easement may be placed, the land may not be subject to any encumbrances, restrictions or servitudes which could defeat the purposes for which the Conservation Easement was granted or which could result in the termination of such Conservation Easement due to events beyond the control of the holder of the Conservation Easement. Developer shall submit the following documents to City Representative for its review to determine the suitability of the title to each tract of land upon which a Conservation Easement is proposed:

- 6.4.1** A commitment for title insurance committing to insure title to the Conservation Easement in the holder thereof;
- 6.4.2** legible copies of all documents referenced in such commitment for title insurance;
- 6.4.3** a current on-the-ground survey of the subject land reflecting the perimeter thereof and each encumbrance, easement or servitude affecting such land and all improvements or other structures thereon; and
- 6.4.4** legible copies of all unrecorded contracts, licenses, leases and agreements then in effect or currently existing but to be effective in the future, which affect the use, enjoyment, occupancy, possession, ownership or title to such land.

Unless City Representative has received and approved such documents (such approval not to be unreasonably withheld), the land (or such portion thereof identified by City Representative) proposed for the Conservation Easement will not be used in calculating the 700-acre requirement set forth in **Section 6.1** hereof. If City Representative fails to notify Developer of any objection(s) within thirty (30) days of receipt of all of the documents required hereunder, City shall be deemed to have approved the submitted documents.

**6.5 City's Approval of Form of Conservation Easements.** Developer shall submit the form of each Conservation Easement to City prior to acquiring such Conservation Easement. City shall review the Conservation Easement documents to ensure compliance with the purposes and intent of this Agreement. If (i) City reasonably determines that any term, condition, encumbrance or other matter set forth in such documents has or would have a material adverse effect on the title or uses of the land covered by such Conservation Easement and (ii) City Representative notifies Developer in writing of City's objection(s) to such documents, Developer shall cure such objection(s) to the reasonable satisfaction of the City. If City Representative fails to notify Developer of any objection(s) within thirty (30) days of receipt of all of the documents required hereunder, City shall be deemed to have approved the submitted documents. If Developer is unable to cure City's objections to such documents, the land covered by such Conservation Easement (or such portion thereof identified as being subject to City's objections) will not be used in calculating the 700-acre requirement set forth in **Section 6.1** hereof.

**6.6 Amendment or Assignment.** If a Conservation Easement has been granted to a non-profit, tax-exempt entity approved by City, such entity may not permit any amendment, release or assignment of the Conservation Easement without the written approval of the City Council, and any purported amendment, release or assignment will be ineffective without such approval.

## **ARTICLE 7. REPRESENTATIONS AND WARRANTIES; COVENANTS; INDEMNITY**

**7.1 Representations and Warranties of Developer .** Developer hereby makes the following representations and warranties to City as of the Effective Date, unless another date is expressly stated to apply:

**7.1.1 Existence.** Developer is a corporation duly incorporated and legally existing under the laws of the State of Delaware, and qualified to transact business in the State.

**7.1.2 Authorization.** Developer is duly and legally authorized to enter into this Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws relating to its corporate existence and authority to act, and the undersigned representative is authorized to act on behalf of and bind Developer to the terms of this Agreement. Developer has provided to City, on or prior to the Effective Date, a certified copy of a resolution of its Board of Directors authorizing Developer's execution of this Agreement through Developer Representative, together with documents evidencing Developer's good standing and authority to transact business in the State. Developer has all requisite power to perform all of its obligations under this Agreement. The execution of this Agreement by Developer does not require any consent or approval which has not been obtained, including without limitation the consent or approval of any Governmental Authority.

**7.1.3 Enforceable Obligations.** Assuming due authorization, execution and delivery by all of the parties hereto and thereto where necessary, this Agreement, all documents executed by Developer pursuant hereto and all obligations of Developer hereunder and thereunder are, to Developer's knowledge and belief, enforceable against Developer in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

**7.1.4 No Legal Bar.** To Developer's knowledge and belief, the execution and delivery of this Agreement, all documents executed by Developer pursuant hereto and all obligations of Developer hereunder and thereunder will not conflict with any provision of any law, regulation or Governmental Rules to which Developer is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Developer is a party or by which it is bound or any order or decree applicable to Developer.

**7.1.5 Litigation.** Except such matters which have been disclosed in writing to City or generally known by the public, there are no legal actions or proceedings pending or, to the knowledge of Developer Representative, threatened against Developer which, if adversely determined, would materially and adversely affect the ability of Developer to fulfill its obligations under this Agreement or the financial condition, business or prospects of Developer.



**7.1.6 Documents.** All documents made available by Developer to City and/or City's agents or representatives prior to the Effective Date, are true, correct and complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein.

**7.1.7 Knowledge.** Developer has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by Developer or by City under this Agreement are in any way inaccurate, incomplete or misleading.

**7.2 Covenants of Developer.** Developer covenants and agrees:

**7.2.1 Golf Course Environmental Management Plan.** The Golf Course Environmental Management Plan imposes requirements reasonably required and designed to protect surface and groundwater resources. Developer confirms that SAWS has and may exercise the powers of enforcement and authority described in the Golf Course Environmental Management Plan. Until the assignment of its responsibility for compliance thereunder, Developer shall observe and perform, or cause to be observed and performed, the obligations and requirements of the Golf Course Environmental Management Plan with respect to any Golf Course Tract (to the extent required by the Golf Course Environmental Management Plan and this Agreement). Nothing herein shall limit Developer's continuing obligations described in **Subsection 10.2.2**.

**7.2.2 Waiver of Subrogation.** Developer waives any subrogation rights against City with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage) which are caused by or result from (i) any risks insured against under any valid collectible insurance contract or policy carried by Developer in force at the time of any such injury and/or damage giving rise to such claim or (ii) any risk that would be covered under any insurance required to be obtained and maintained by Developer under or pursuant to this Agreement, even if such required insurance is not in fact obtained and maintained. This waiver of subrogation is not intended to limit the claims of Developer or City to the face amount or coverage of such insurance policies.

**7.2.3 Waiver of Consequential Damages.** Developer waives all present and future claims for consequential damages against City arising from or related to this Agreement, except for any claim relating to City's affirmative actions which result in a material breach of this Agreement, including, but not limited to, City's annexation of the Land (or any part thereof) in violation of this Agreement or City's unauthorized imposition of moratoria on building. Such waiver shall survive any termination of this Agreement.

**7.2.4 Release of Existing Claims.** Developer hereby releases any and all presently existing claims of every kind or character which Developer has or may have under or pursuant to this Agreement or its subject matter, against City and its elected officials, members, agents, employees, officers, directors, shareholders and representatives, individually and collectively.

**7.3 Representations and Warranties of City.** City hereby makes the following representations and warranties to Developer as of the Effective Date unless another date is expressly stated to apply:

**7.3.1 Existence.** City is a municipal corporation and home rule city of the State principally situated in Bexar County.

**7.3.2 Power and Authority.** City has all requisite municipal corporate power and authority to enter into this Agreement and perform all of its obligations hereunder. The execution and performance by City of this Agreement has been duly authorized by City's Ordinance and, except for the additional approval of Developer, no consent or approval of any other person is required, including, without limitation, any Governmental Authority.

**7.3.3 No Legal Bar.** To City's knowledge and belief, the execution and performance by City of this Agreement, all documents executed by City pursuant hereto, and all obligations of City hereunder and thereunder do not and will not violate any provisions of any contract, agreement or instrument to which City is a party or is subject.

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**7.3.4 Litigation.** Except such matters which have been disclosed in writing to Developer or generally are known by the public, there are no legal actions or proceedings pending known to City Representative which, if adversely determined, would materially and adversely affect the ability of City to fulfill its obligations under this Agreement.

**7.3.5 Enforceable Obligations.** Assuming due authorization, execution and delivery by all other parties hereto and thereto where necessary, this Agreement, all documents executed by City pursuant hereto and all obligations of City hereunder and thereunder are, to City's knowledge and belief, enforceable against City in accordance with their terms.

#### **7.4 Covenants of City.**

**7.4.1 Waiver of Subrogation.** With respect to any policies of insurance which City may obtain (without any obligation to obtain such policies of insurance), City waives any subrogation rights against Developer with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage) which are caused by or result from any risks insured against under any valid collectible insurance contract or policy carried by City in force at the time of any such injury and/or damage giving rise to such claim. This waiver of subrogation is not intended to limit the claims of City to the face amount or coverage of such insurance policies.

**7.4.2 Notice of Litigation.** City shall deliver notice to Developer of any legal proceedings brought against City related to this Agreement. Such notice shall be delivered not later than fifteen (15) days after the earlier to occur of City's receipt of service of a claim or City's receipt of actual written notice of a claim, but in any event, prior to any settlement of such claim by City.

**7.4.3 Confirmation of Compliance.** If, to the actual knowledge of City Representative, no uncured event of default exists under the terms of this Agreement, City Representative shall confirm same in writing to Developer upon Developer's written request for such confirmation. Upon such request, if, to the actual knowledge of City Representative, one or more uncured events of default exist under the terms of this Agreement, City Representative shall confirm same in writing to Developer and list such event(s). Developer agrees not to submit such request more often than once during any sixty (60) day period during the Term of this Agreement.

**7.5 Disclaimer of City.** ANY CITY APPROVALS GRANTED PURSUANT TO THIS AGREEMENT DO NOT REFLECT ANY COMMITMENT, APPROVAL, REPRESENTATION, WARRANTY OR OBLIGATION WITH RESPECT TO THE SUFFICIENCY, ACCURACY, COMPLETENESS OR INTEGRITY OF ANY MATTERS SO APPROVED BY CITY, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY CITY. DEVELOPER ACKNOWLEDGES THAT, EXCEPT FOR CITY'S REPRESENTATIONS CONTAINED WITHIN THIS AGREEMENT, NEITHER CITY NOR ANY AFFILIATE OF CITY NOR ANY RELATED PARTY OF CITY HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE DEVELOPMENT, THE SUBJECT MATTER OF THIS AGREEMENT OR ANY EXHIBIT HERETO, OTHER THAN THE EXPRESS OBLIGATIONS CONTAINED IN THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED BY THIS AGREEMENT. DEVELOPER AGREES THAT NEITHER CITY NOR ANY OF CITY'S AFFILIATES AND RELATED PARTIES WILL HAVE ANY RESPONSIBILITY FOR (AND HAVE MADE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO) ANY OF THE FOLLOWING:

**7.5.1** THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED OR AUTHORIZED FOR INCLUSION BY ANY PERSON OTHER THAN CITY'S REPRESENTATIVE UNDER THIS AGREEMENT;

**7.5.2.** THE COMPLIANCE OF THE DEVELOPMENT, THE DEVELOPMENT PLAN AND ANY PROPOSED IMPROVEMENT WITH ANY GOVERNMENTAL RULE; OR

**7.5.3** THE ACCURACY OF ANY FINANCIAL PROJECTIONS, COST ESTIMATES, DEVELOPMENT SCHEDULES OR OTHER MATTERS RELATING TO THE DEVELOPMENT.

NEITHER CITY NOR ANY OF CITY'S AFFILIATES AND RELATED PARTIES WILL BE LIABLE AS A RESULT OF ANY FAILURE BY ANY PERSON (OTHER THAN CITY, CITY'S AFFILIATES OR RELATED PARTIES, INCLUDING, WITHOUT LIMITATION, SAWS) UNDER THIS AGREEMENT (INCLUDING WITHOUT LIMITATION ANY DOCUMENT APPENDED AS AN EXHIBIT TO THIS AGREEMENT) TO PERFORM THEIR RESPECTIVE OBLIGATIONS THEREUNDER. IT IS UNDERSTOOD AND AGREED BY DEVELOPER (FOR ITSELF AND FOR ANY PERSON CLAIMING BY, THROUGH OR UNDER IT) THAT DEVELOPER HAS BEEN AND WILL CONTINUE TO BE SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF AND INVESTIGATION INTO THE LAND, THE DEVELOPMENT, AND THE DEVELOPMENT PLAN.

**7.6 Reliance.** Each Party recognizes and acknowledges that, in entering into this Agreement, (a) all Parties are expressly and primarily relying on the truth and accuracy of the foregoing representations, warranties and covenants of each Party without any obligation to investigate the accuracy or completeness of such representations and covenants, and notwithstanding any investigation thereof by any Party, that such reliance exists on the part of each Party prior to the Effective Date and thereafter; (b) such representations and covenants are a material inducement to each Party in making this Agreement and agreeing to undertake and accept its terms, and (c) each Party would not be willing to do so in the absence of any of such representations and covenants, all of which shall survive the termination of this Agreement.

**7.7 Indemnification by Developer.** EXCEPT AS DESCRIBED OTHERWISE HEREIN AND IN SECTION 7.8, DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND THE ELECTED OFFICIALS, MEMBERS, AGENTS, EMPLOYEES, OFFICERS DIRECTORS AND REPRESENTATIVES OF CITY (INDIVIDUALLY AND COLLECTIVELY, "**INDEMNITEE**") FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, BODILY INJURY, DEATH AND PROPERTY DAMAGE, (COLLECTIVELY REFERRED TO AS "**CLAIMS**") MADE UPON INDEMNITEE DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER'S ACTIVITIES RELATED TO THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, DEVELOPER'S EMPLOYEE OR PERSONNEL, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, PERSONNEL, DIRECTORS AND REPRESENTATIVES (INDIVIDUALLY AND COLLECTIVELY, "**DEVELOPER PARTY**"). THE INDEMNITY PROVIDED FOR IN THIS SECTION 7.7 SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE IN INSTANCES WHERE SUCH NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST AN INDEMNITEE KNOWN TO DEVELOPER RELATED TO OR ARISING OUT OF DEVELOPER'S ACTIVITIES RELATED TO THIS AGREEMENT. DEVELOPER SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND, AT DEVELOPER'S EXPENSE. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS SECTION 7.7.

**7.8 Exceptions to Indemnification by Developer.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN SECTION 7.7, DEVELOPER SHALL NOT INDEMNIFY, DEFEND AND HOLD HARMLESS ANY INDEMNITEE FROM CLAIMS RESULTING FROM OR RELATED TO:

**7.8.1** THE CIVIL ACTION NO. SA-02-CA-618-FB FILED IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION OR ANY

SUBSEQUENT ACTION ASSERTING THE SAME OR SIMILAR CLAIMS BASED ON THE SAME OR SIMILAR FACTS,

**7.8.2** ANY CHALLENGE TO CITY'S AUTHORITY TO ENTER INTO OR PERFORM UNDER THIS AGREEMENT, OR

**7.8.3** CITY'S NEGLIGENCE OR WILLFUL MISCONDUCT IN THE EXERCISE OF ITS GOVERNMENTAL FUNCTIONS.

## **ARTICLE 8. TERMINATION**

**8.1 Termination by Developer** . Upon notice to City, Developer may terminate this Agreement at any time prior to the fourth (4<sup>th</sup>) anniversary of the Effective Date.

**8.2 Termination Events Without Notice and Opportunity to Cure.** City may terminate this Agreement without notice to Developer and without Developer having an opportunity to cure if:

**8.2.1** At least two (2) golf courses on the Land are not being operated as PGA Tournament Players Club courses under the Golf Course License Agreement as of the fifth (5<sup>th</sup>) anniversary of the Effective Date; or

**8.2.2** The Hotel is not in operation and open to the general public as of the fifth (5<sup>th</sup>) anniversary of the Effective Date.

**8.2.3** Commencement of Hotel Construction has not occurred by the second (2<sup>nd</sup>) anniversary of the Effective Date.

**8.2.4** Commencement of Golf Course Construction has not occurred prior to the third (3<sup>rd</sup>) anniversary of the Effective Date.

**8.3 Termination Events With Notice and Opportunity to Cure.** Upon the occurrence of any of the following defaults of this Agreement, City shall give notice of such default to Developer in the manner required for notices under this Agreement:

**8.3.1** Developer or any Representative has failed to execute this Agreement on or before January 30, 2005, or Developer has failed to execute, acknowledge and deliver to City the First Amendment to the Wage Standards Agreement and the First Amendment to the Landowner's Consent to Annexation within thirty (30) days following the Effective Date.

**8.3.2** Developer has failed to execute, acknowledge and file for record the First Amendment to the Declaration within thirty (30) days following the Effective Date.

**8.3.3** Conservation Easements covering at least 700 acres have not been obtained in accordance with the requirements of this Agreement, as of the fourth (4<sup>th</sup>) anniversary of the Effective Date.

**8.3.4** Prior to a permitted assignment under **Subsection 10.2.2** hereof, a breach of the Golf Course Environmental Management Plan has occurred which authorizes City's termination of this Agreement, according to the terms of Section 7.1 of such Golf Course Environmental Management Plan.

**8.3.5** Any failure to pay the sum of \$100,000.00 to SAWS annually during the term of this Agreement in accordance with this Agreement and the Golf Course Environmental Management Plan.

**8.3.6** Developer's failure to file a Supplement (as defined in the Declaration) in the Official Records in accordance with the Declaration prior to Completion of Construction upon a tract to be used for Golf Course Permitted Uses (as defined in the Declaration).

**8.3.7** A material breach by Developer of the Restrictions or Developer shall take legal action to oppose enforcement of the Restrictions by City or SAWS upon breach thereof by any third party.

**8.3.8** An Event of Non-Compliance (as described in the Wage Standards Agreement) shall not be cured in accordance with the Wages Standards Agreement.

**8.3.9** Developer shall seek to withdraw, rescind or nullify the Landowner's Consent to Annexation or to otherwise challenge the enforceability thereof by City, except to the extent permitted under such Landowner's Consent to Annexation.

**8.3.10** Developer's failure to timely provide to City the certificate required pursuant to Section 4.6 of this Agreement, or the agreement described in such certificate is terminated by any party thereto and a superceding agreement acceptable to City is not provided to City within one-hundred and eighty (180) days following such termination.

**8.3.11** Developer's failure to timely provide to City the certificate required pursuant to Section 4.7 of this Agreement.

**8.3.12** Developer's failure to timely provide to City the certificate required pursuant to Section 4.8 of this Agreement or the agreement described in such certificate is terminated by any party thereto.

City may terminate this Agreement if any such default under **Section 8.3** is not cured to the reasonable satisfaction of City within thirty (30) days following the date of such notice. If such default cannot reasonably be cured within such 30-day period because of the nature of such default, Developer must initiate efforts to cure such default within such thirty (30) day period and diligently and continuously pursue its efforts to cure such default thereafter until such cure is accomplished, not to exceed a total of ninety (90) days. If such cure is not accomplished within said ninety (90) day period, City may terminate this Agreement by notice to Developer.

#### **8.4. Effect of Termination of this Agreement .**

**8.4.1** If City exercises its right to terminate this Agreement pursuant to **Section 8.2** or **Section 8.3** hereof, or if Developer exercises its right to terminate this Agreement pursuant to **Section 8.1**, this Agreement shall terminate in all respects except as to those matters which survive termination as expressly stated in this Agreement.

**8.4.2** In addition to the right to terminate this Agreement, pursuant to **Section 8.2** or **Section 8.3**, City will have the right to pursue all other or additional remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus. The exercise of any remedy by City will not be an election of remedies or preclude the exercise of any other remedy by City. The provisions hereof shall survive any termination of this Agreement.

#### **8.5 Breach By City or Developer.**

**8.5.1 Notice of Breach and Cure Period.** If either City or Developer fails or refuses to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by such Party under this Agreement (including any obligation, covenant or agreement set forth in any Exhibit to this Agreement), unless prevented by an unreasonable action of the other Party, such Party shall be in breach hereof. If a breach of this Agreement by Developer or City (other than a Termination Event) occurs and continues following thirty (30) days' written notice from City's Representative or from Developer's Representative, as applicable, of such breach, the non-defaulting Party (City or Developer, as applicable) will be entitled to exercise the remedies set forth herein; provided, however, that if such breach cannot reasonably be cured within such thirty (30) day period because of the nature of such breach, the defaulting Party must initiate efforts to cure such breach within such thirty (30) day period and diligently and continuously pursue its efforts to cure such breach thereafter until such breach is cured, not to exceed a total of one hundred twenty (120) days. If such cure is not accomplished within said 120- day period, the non-defaulting Party (City or Developer, as applicable) may pursue the remedies set

forth in **Subsection 8.5.2** below. The provisions hereof shall survive and remain enforceable and binding upon the Parties following any termination of this Agreement.

**8.5.2 Remedies.** After expiration of any applicable cure period and delivery of any required notice, the non-defaulting Party (City or Developer, as applicable) may pursue, at its option, any and all remedies at law and/or in equity, including injunctive relief. No remedy stated herein is an exclusive remedy and pursuit of any remedy is not an election of remedies precluding the availability of any other remedy. No failure to exercise any remedy hereunder will effect a waiver of such remedy. The provisions hereof shall survive any termination of this Agreement.

## **ARTICLE 9. CAPACITY OF CITY**

**9.1 City Council Approval.** Notwithstanding anything to the contrary set forth in this Agreement, Developer recognizes and agrees that any contracts or agreements contemplated to be entered into by City under the terms of this Agreement which are not attached as exhibits to this Agreement will be subject to the prior approval of the City Council, if the approval of the City Council is required under the terms of City's Charter or other applicable law.

**9.2 Capacity of City.** Without in any way limiting or exercising the obligation, duties, covenants and agreements of City as a Party to this Agreement, the Parties agree that any action, omission or circumstance arising out of the exercise or performance of City's required Governmental Functions shall not cause or constitute a default by City under this Agreement or any other document or give rise to any rights or claims for damages or injury against City in its capacity as a party to this Agreement. Developer's remedies for any injury, damage or claim resulting from any other action, omission or circumstance shall be governed by the laws and regulations concerning claims against City as a charter city and governmental entity. The provisions hereof shall survive any termination of this Agreement.

**9.3 Capacity of Parties Acting on Behalf of City.** Notwithstanding anything to the contrary in this Agreement, all references in this Agreement to employees, agents, representatives, contractors and the like of City shall refer only to such persons or entities acting on behalf of City in its capacity as a Party to this Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of City's other Governmental Functions.

**9.4 No Limitation on City's Governmental Functions.** The Parties hereto acknowledge that no representation, warranty, consent, approval or agreement in this Agreement by City (as a Party to this Agreement) shall be binding upon, constitute a waiver by or estop City from exercising in good faith any of its rights, powers or duties in its required Governmental Functions. For example, approval by City of this Agreement shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, City's Fire Department, Building Inspections Department, Public Works Department, Planning Department and Economic Development Department or other approval required by City Code of San Antonio, Texas, or Governmental Rules.

**9.5 Events Beyond City's Control.** City shall have no liability to Developer in the event that this Agreement may be suspended, enjoined, terminated or nullified by the ruling by a court of competent jurisdiction or that court's finding that this Agreement is not enforceable by either Party or that any action or undertaking by City hereunder is beyond the authority conferred upon City by any Governmental Rules. This **Section 9.5** shall be construed as a separate agreement by Developer and City and may be enforced separately and independently of the Agreement and is enforceable regardless of the effect, lack of effect, stay of effect or termination of the Agreement.

## **ARTICLE 10. MISCELLANEOUS**

**10.1 Beneficiaries.** This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns, including (without implied limitation) each Landowner.

**10.2 Assignment.**

**10.2.1 Assignment of Agreement.** Except as provided in **Subsection 10.2.2** below, no Party (or assignee of a Party) shall assign (partially or in the entirety) any obligations under this Agreement without prior written consent of the other Party, such consent to not be unreasonably withheld; provided, however, that, (i) all rights relating to the Land under this Agreement, including (without implied limitation) the right on non-annexation and moratoria on building, shall run with the Land during the development of the Land and any subsequent owner, mortgagee, lessee or other party with an interest therein shall enjoy such rights as described herein during the Term, and (ii) if Developer possesses or acquires any rights or entitlements with respect to the development of the Land and the construction of improvements thereon which run with all or a part the Land, any subsequent owner, mortgagee, lessee or other party with an interest therein shall automatically be a beneficiary of such rights and entitlements to the extent of such interest in the Land or portion thereof. Notwithstanding the foregoing, Developer may collaterally assign its rights and obligations hereunder to any Lender to which Developer has granted a lien encumbering all or part of the Land. Nothing contained herein shall be construed to conflict in any way with the provision set forth in **Section 10.1**.

**10.2.2 Golf Course Environmental Management Plan.** Developer may convey the Golf Course Tracts and assign the obligations and agreements under the Golf Course Environmental Management Plan to Marriott at any time. Upon such assignment, Developer shall be expressly released by City and SAWS from further liability thereunder with respect to such Golf Course Tract upon following conditions:

(i) no default or breach shall then exist (or shall thereafter accrue based upon facts or circumstances which existed prior to such assignment by Developer) under the Golf Course Environmental Management Plan; and

(ii) the grantee shall assume in writing all of the obligations and agreements of Developer under the Golf Course Environmental Management Plan with respect to such Golf Course Tract, with an originally signed copy of such assumption agreement delivered to City.

Upon any conveyance of a Golf Course Tract by Developer or a permitted assignee to a Marriott Controlled Entity, PGA Tour or a PGA Tour Entity, such grantor may also assign to the grantee, grantor's obligations and agreements under the Golf Course Environmental Management Plan with respect to such Golf Course Tract. Upon such assignment, the grantor shall be expressly released by City and SAWS from further liability thereunder with respect to such Golf Course Tract upon following conditions:

(i) no default or breach shall then exist (or shall thereafter accrue based upon facts or circumstances which existed prior to such assignment by grantor) under the Golf Course Environmental Management Plan;

(ii) if, prior to undertaking a conveyance, such grantor has provided written financial information to SAWS reflecting that the Marriott Controlled Entity, PGA Tour or PGA Tour Owner Entity possessed (or would possess upon such conveyance) the financial resources necessary to undertake and perform the financial obligations and agreements of Developer under the terms of the Golf Course Environmental Management Plan with respect to such Golf Course Tract, and SAWS approved such conveyance or did not object in writing to such conveyance within thirty (30) days following SAWS' receipt thereof (any such objection being made on the basis that SAWS reasonably believes that such grantee does not possess adequate financial resources); and

(iii) the grantee shall assume in writing all of the obligations and agreements of grantor under the Golf Course Environmental Management Plan with respect to such Golf Course Tract, with an originally signed copy of such assumption agreement delivered to City.

Notwithstanding the foregoing, Developer and such grantee shall be jointly and severally liable for the obligation to pay \$100,000.00 annually to SAWS for administrative, review, monitoring and investigation costs, as described in the Golf Course Environmental Management Plan.

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**10.3 Notices.** The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications required or permitted to be given by one Party to another by this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below for such Party, (a) by delivering the same in person, (b) by depositing the same in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified, or (c) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the Party to be notified, or (d) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date following such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

**CITY:** City of San Antonio  
100 Military Plaza, 1<sup>st</sup> Floor  
San Antonio, Texas 78207  
Attention: Director of Development Services

**With copies to:** City Clerk  
100 Military Plaza, 2<sup>nd</sup> Floor  
San Antonio, Texas 78205, and  
  
City Attorney  
100 Military Plaza, 3<sup>rd</sup> Floor  
San Antonio, Texas 78205

**DEVELOPER:** Lumbermen's Investment Corporation  
5495 Beltline Road, Suite 225  
Dallas, Texas 75240  
Attention: President

**With a copies to:** Lumbermen's Investment Corporation  
1300 S. MoPac Expressway  
Austin, Texas 78746  
Attention: General Counsel  
  
Akin Gump Strauss Hauer & Feld LLP  
300 Convent, Suite 1500  
San Antonio, Texas 78205  
Attention: A. William Alberts

The Parties may, from time to time, change their respective addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other Parties.

**10.4 Business Days.** If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

**10.5 Time.** Time is of the essence in all things pertaining to the performance of this Agreement.

**10.6 Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of any Party hereunder is incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, and only in that event, it is the intention of the Parties hereto that this Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that the remainder of this Agreement will not be affected.

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**10.7 Waiver.** Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party will have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

**10.8 Reservation of Rights.** To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

**10.9 Further Documents.** The Parties agree that at any time after execution of this Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as any other Party may reasonably request in order to effectuate the terms of this Agreement.

**10.10 Incorporation of Exhibits and Other Documents by Reference.** All Exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

**10.11 Governing Law; Venue.** THIS AGREEMENT, AND THE ACTIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICTS OF LAW). VENUE SHALL BE IN BEXAR COUNTY, TEXAS.

**10.12 No Party Deemed Drafter.** Each Party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter thereof.

**10.13 Use of Defined Terms.** Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of members of the relevant class. Any reference to this Agreement or any Exhibits hereto and any other instruments, documents and agreements shall include this Agreement, exhibits and other instruments, documents and agreements as originally executed or existed and as the same may from time to time be supplemented, modified or amended.

**10.14 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one document. The Parties agree to circulate for execution all executed such counterparts in order that each Party may obtain a counterpart executed by all Parties.

**10.15 Entire Agreement, Amendment, Survival.** This Agreement, together with the exhibits hereto and the documents referenced herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and in the case of City, approved by action of City Council. All of the representations and warranties of each Party contained in this Agreement shall survive the execution, delivery and acceptance of this Agreement and any termination hereof. Unless otherwise set forth in this Agreement, all agreements of the Parties contained in this Agreement which must survive to afford each respective Party the anticipated benefits of such agreements shall likewise survive, whether or not identified in this Agreement to so survive.

**10.16 Table of Contents; Headings.** The table of contents and headings of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement.

**10.17 Notices of Changes in Fact.** Promptly after either Party becomes aware of same, such Party will notify the other Party of (a) any change in any material fact or circumstance represented or warranted by such Party in this Agreement, and (b) any default, event or condition which, with notice or lapse of time or both, could become

a breach by such Party under this Agreement, specifying in each case, the nature thereof and what action such Party has taken, is taking and proposes to take with respect thereto. Such notice shall not delay or impede the exercise of remedy which City has under this Agreement or otherwise.

**10.18 Compliance Review Team.** Following reasonable notice and during normal business hours, the Parties agree to make available for review by the Compliance Review Team at the site where the same may be located during the normal course of business, such information as it may reasonably require, from time to time, for the purposes of (a) reviewing the performance of the Parties under this Agreement and each exhibit hereto and (b) confirming compliance of the Parties with the terms, conditions and requirements of this Agreement and each exhibit hereto. Any information which is not required by law to be made public may not be copied or disclosed by the Compliance Review Team, except as necessary to enforce the agreements and obligations of Parties under this Agreement. Notwithstanding the foregoing, no Party shall be required by the Compliance Review Team to create, prepare or generate data, reports or other compilations of information not required to be prepared or generated under other terms of this Agreement or of any exhibit hereto.

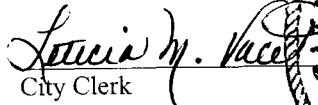
**10.19 Joinder by CCHRD Limited Partnership.** Developer has previously conveyed a tract of 30.86 acres, more or less, of the Land to CCHRD Limited Partnership. CCHRD Limited Partnership joins in the execution of this Agreement to evidence its acknowledgment of the terms of this Agreement (including each of the exhibits hereto) and its agreement to such terms.

THEREFORE, IN WITNESS WHEREOF, the Parties have executed this Agreement this 28  
day of January, 2005.


[signatures appear on following pages]

CITY OF SAN ANTONIO

Attest:

  
Lucinda M. Vacelli  
City Clerk

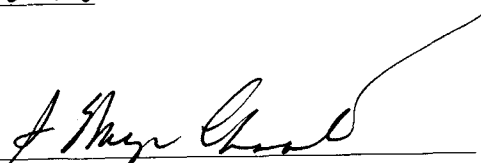


  
Rolando Bono  
Interim City Manager

Approved as to Form:

  
Andrew N. Martin, City Attorney  
F.

I, the undersigned, as an attorney employed by the City of San Antonio, Texas, for the purposes of negotiating and drafting the foregoing Agreement on behalf of the City of San Antonio, Texas, hereby certify that I have read, passed upon and approved as to form the foregoing Agreement and same reflects the terms approved by the City Council on January 6, 2005, as set forth in Ordinance 100238.

  
G. Wayne Choate  
Goode Casseb Jones Riklin Choate & Watson, A  
Professional Corporation

**Developer:**

**LUMBERMEN'S INVESTMENT CORPORATION**

  
John Pierret, Executive Vice President

**Acknowledged and Agreed by Developer Partnership:**

**CCRHD LIMITED PARTNERSHIP**

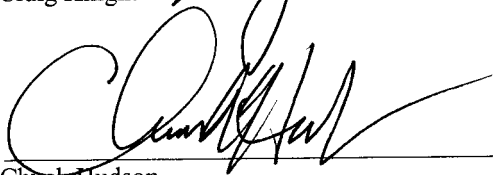
**By: LIC VENTURES, INC., its general partner**

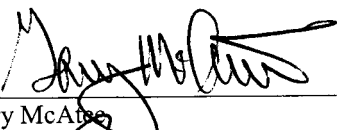
  
John Pierret, Executive Vice President

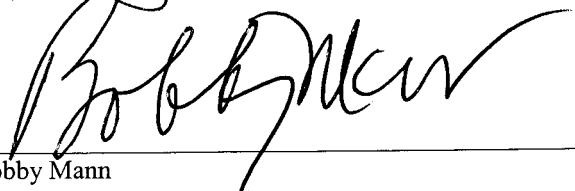
**Representatives:**

  
John Pierret

  
Craig Knight

  
Chuck Hudson

  
Gary McAttee

  
Bobby Mann